I. T. O. Corporation of Baltimore *and* Garris S. McFadden. Case 5-CA-11921

April 16, 1981

DECISION AND ORDER

On December 12, 1980, Administrative Law Judge Stanley N. Ohlbaum issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, the General Counsel filed cross-exceptions and brief and an answering brief to Respondent's exceptions, and Respondent filed in letter form an answering brief to the General Counsel's cross-exceptions.[1]

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions of the ?Administrative Law Judge and to adopt his recommended Order, as modified herein.[3]

The Board agrees with the Administrative Law Judge that there is insufficient evidence in the record on which to base a finding that Charging Party McFadden was a supervisor within the meaning of Section 2(11) of the Act. (See ALJD, sec. III, C, fn. 13.)[4]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, I. T. O. Corporation of Baltimore, Maryland, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Delete the final clause from paragraph 1(a) as follows:

"or because he or she has lawfully exercised or proposes to exercise or continue to exercise or assert any other right under the National Labor Relations Act."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT demote or otherwise in violation of the Act take any adverse personnel action against any employee because he or she pickets to protest allegedly racially discriminatory hiring or other personnel practices in or about Baltimore harbor, or to protest the alleged inadequacy of measures to correct those practices.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

WE WILL offer Garris S. McFadden immediate, full, and unconditional reinstatement to his former job or, if that position no longer exists, to a substantially equivalent job without prejudice to his seniority and other rights and benefits previously enjoyed, just as if we had not demoted him, and WE WILL pay him, with interest, all money and benefits lost by him because of that demotion.

WE WILL remove from his personnel records any mention that he was demoted for any reason involving his performance of his job, and WE WILL make no statement to that effect to any employer, prospective employer, employment agency, unemployment insurance agency, hiring hall, or character or reference inquiry.

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[1] The Board hereby grants the General Counsel's motion of February 25, 1981, to strike pars. 2, 3, and 4 of Respondent's memorandum of February 20, 1981. These paragraphs respond to arguments of the General Counsel in its answering brief to Respondent's exceptions, and are therefore prohibited by National Labor Relations Board Rules and Regulations, Series 8, as amended, Sec. 102.46(g); see also Sec. 102.46(c)-(f).

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[3] We have modified the Administrative Law Judge's notice to conform with his recommended Order.

[4] We do not adopt his contrary assumption as stated in ALJD, sec. III, B, fn. 2.

Our employees have the right to engage in lawful picketing to protest racially or otherwise improperly discriminatory hiring practices, or inadequate correction thereof, without interference, restraint, coercion, or retaliation from us.

I. T. O. CORPORATION OF BALTIMORE

DECISION

I. PRELIMINARY STATEMENT; ISSUE

STANLEY N. OHLBAUM, Administrative Law Judge: This proceeding[1] under the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.* (hereinafter referred to as the Act), was heard before me in Baltimore, Maryland, on October 7, 1978, with all parties participating throughout by counsel (Charging Party by the General Counsel) and afforded full opportunity to present evidence, arguments, proposed findings and conclusions, and briefs. After unopposed applications of counsel for both sides, the time for filing briefs was extended to December 5, 1980, and briefs were received on December 5. Proof and briefs have been carefully considered.

The basic issue presented is whether Respondent Employer violated Section 8(a)(1) and (3) of the Act by demoting Charging Party employee from his position and failing and refusing to reinstate him thereto because he engaged in protected concerted picketing activity under the Act.

Upon the entire record and my observation of the testimonial demeanor of the witnesses, I make the following:

FINDINGS AND CONCLUSIONS

II. JURISDICTION

At all material times, Respondent has been and is a Maryland corporation engaged in the stevedoring business in Baltimore, Maryland. During the representative 12-month period immediately preceding issuance of the complaint, Respondent furnished to steamship companies operating vessels in interstate and foreign commerce stevedoring services valued in excess of $100,000.

I find that at all material times Respondent has been and is an employer engaged in commerce and in operations affecting commerce as defined in Section 2(2), (6), and (7) of the Act; and that at all of those times International Lonshoremen's Association, Local 333 (hereinafter referred to as the Union), has been and is a labor organization as defined in Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

A. *Specific Basic Issue*

The specific basic issue presented by the proof is whether (as the General Counsel contends) Charging Party McFadden was demoted by Respondent from foreman, or extra or part-time foreman to tractor operator because he engaged in protected concerted activity (picketing on off-time regarding alleged racially discriminatory job practices and/or alleged inadequate remediation thereof), or (as Respondent contends) because he failed to attend a safety meeting.

B. *Facts as Found*

Respondent conducts a stevedoring business in Baltimore harbor, supplying stevedores to load and unload ships there. In its business operations, Respondent's unionized longshoremen laborers work in gangs of 15–21 led by "gang carriers," who are working leaders, supervised by foremen who oversee the work of more than one gang. Respondent has some 20 such gangs as well as around 200 drivers and 1,000 terminal laborers, all assigned through a union hiring center. Typically, three gangs load a ship, with a foreman aboard, another foreman on the pier, and possibly a third foreman at the point where the cargo originates. Foremen, who do no actual physical labor, coordinate the loading of cargo, and are authorized to lay off longshoremen, who, however, as also foremen, are contractually supplied by the Union under a seniority system. The number of gangs, as well as of foremen employed, varies with work demands. Only when no full-time foremen are available does Respondent utilize part-time, temporary, or extra foremen.

Commencing in March 1979, Respondent designated and thereafter utilized Charging Party McFadden—who had since around 1964 (except for a 5-year hiatus as a union official from 1972–77) been employed by Respondent or its predecessor as a tractor operator—as a foreman, temporary foreman, or extra foreman.[2]

[1] Based upon complaint issued on April 11, growing out of a charge filed on February 14, 1980, by the above Charging Party against Respondent Employer. Unless otherwise specified, dates throughout this Decision are in 1980. The General Counsel's unopposed December 3 motion to correct the transcript is hereby granted.

[2] Although there is some dispute as to whether this was at McFadden's request or Respondent's behest, I do not believe this has significance here either way. Nor may it be crucial, for reasons to be shown, whether McFadden was regarded, by Respondent or only in his own eyes, as a full-fledged, full-time foreman, as distinguished from a part-time, temporary, or extra foreman. What is clear is that McFadden, who had been president of the Union and also has or had an additional job or occupation, could not under the collective agreement be designated or supplied by the Union as, or given the job title by Respondent of, regular or full-time foreman, since he lacked the requisite seniority, and that for that reason the Union did not accede to such a designation for him, asserting that he was listed as a "tractor driver" (his former or regular job) (Resp. Exh. 2)—notwithstanding Respondent's designation of McFadden as some sort of foreman, according to McFadden just a "foreman" but according to Respondent only a temporary, part-time or extra foreman (while at the same time retained in its records under his regular job title of "tractor operator"), a job category, title, or nomenclature not reflected in or contractually recognized by the Union. However, while in his job in that capacity, whatever his designation(s) or title(s), it is clear and undisputed that McFadden received regular foreman pay (higher than that of a tractor operator) and that when he functioned as such he possessed and exercised sufficient authority over subordinates (longshoremen and gang carriers) to satisfy the statutory requirements under the Act (Sec. 2(11)) to be considered a supervisor, and it is so found.

McFadden did not work on February 6 or 7 (Wednesday and Thursday), either at Respondent's direction or at least by its sanction; certainly his absence was not unauthorized. According to his testimony, which I credit, upon completion of his work at Dundalk Marine Terminal at around 2:30 p.m. on February 5 (Tuesday), as usual he stopped by at the shack of Respondent's Labor Coordinator and Supervisor Rogers (in charge of ordering and constituting all work gangs in Respondent's stevedoring enterprise) to find out about work in the "next couple of days." After consulting his schedule, Rogers remarked that there would be "just one ship. . . . It looks like I will not be using you until Friday . . . [t]he 8th." Apparently surmising that McFadden would be going fishing in his boat, his hobby, Rogers asked him to "bring me some of the fish," with which McFadden left.[3]

After he arrived home, McFadden was asked to attend a meeting concerning racial hiring procedures on the Baltimore waterfront. As a consequence, McFadden joined with other longshoremen in picketing Steamship Trade Association and International Longshoremen's Association—concededly not, according to Respondent's Vice President Brown, Respondent—in front of Dundalk Marine Terminal on February 6 and 7 in protest of what was regarded as an unsatisfactory, inadequate, and/or inadequately enforced 1971 U.S. district court decree concerning racially imbalanced hiring and promotion practices, to the prejudice of black persons, of whom McFadden is one.[4] McFadden was observed picketing by various of Respondent's officials, including its Labor Coordinator Rogers and its Vice President Brown. Although Rogers, as well as other company officials or supervisors (Superintendent Kamiski and Operational Superintendent Swain) spoke to McFadden, none of them said anything about any company safety meeting or attendance there.

On Thursday afternoon, February 7, when McFadden telephoned in to Rogers to find out if there would be work for him the next day, Friday, February 8, he was instructed to report to work on Friday. He did so and worked that day in his usual capacity, assigned as an extra foreman in Rogers' office. On Saturday, February 9, when he telephoned in, McFadden was told to report again on Sunday morning, February 10. When he did so, at around 7:15 a.m., he was assigned by Superintendent Kamiski as a tractor driver. When he asked Kamiski why, the latter referred him to Vice President Brown. Since, however, Brown was not there that day (Sunday), McFadden approached him the next morning (Monday, February 11). According to McFadden, when he asked Brown why he was no longer being used as a foreman, Brown answered, "Because you are fired . . . because you were picketing." When McFadden responded, "I am a union man, a foreman. I am still in the union. I have a right." Brown replied, "You don't have that right. None of my foreman [sic] is making a laughing stock of me with all of my peers.[5] Furthermore, you shouldn't be contesting the court decree anyway. . . . It's the American system. . . . If you don't like it you should leave the country." McFadden is insistent in his testimony that at no time did Brown so much as mention that McFadden had missed a safety meeting or that his "firing" or demotion was in any way linked thereto. McFadden further insists that it was not until 2 or 3 days later that for the first time he heard, from a gang carrier at the union hall, that there had been a safety meeting.

Respondent contends that it demoted McFadden back to his former job and pay of tractor driver or, at any rate, stripped him of his status as temporary, part-time, or extra foreman, because he did not attend a company safety meeting on Thursday, February 7. (It will be recalled that this was one of the days when McFadden was off from work, having been told there was no work for him that day.) McFadden, however, insists—and I credit his testimony—that he was not told and did not know in advance about any such meeting;[6] and there is no persuasive proof, by substantial credible evidence as required, that McFadden was informed or knew about the meeting before it occurred.[7] McFadden further testified credibly[8] that he had missed safety meetings in the past, without being excused or in any way disciplined therefor; and that to his knowledge no employee had been disciplined or censured for missing such a meeting. Respondent's Vice President Brown concedes that in his 18 years with Respondent he has never disciplined any other employee for missing a safety meeting.[9] At the time in question, Respondent was either not or at least not invariably paying its employees for attending such meetings, and it can scarcely be supposed that Respondent expected an employee to return from his vacation, furlough, or a day off, not only disrupting his own time off but also potentially at his own expense, to attend

[3] Rogers' testimonial contribution to the foregoing was that he was unable to "recall" the conversation. In this posture of the record, upon comparative testimonial demeanor observations, and my reaction to McFadden as a person worthy of belief, I accept his better memory and credit his described testimony.

[4] McFadden had previously approached union officials regarding this problem, to no avail.

[5] In this connection it is to be noted that Respondent strongly contends here that *it did not* demote McFadden because of his picketing, but because he missed a company safety meeting.

[6] Respondent's gang carrier Slappy likewise credibly testified that he also was not informed about and did not attend the safety meeting on February 7. According to Respondent's Vice President Brown and Labor Coordinator Rogers, safety meetings are held sporadically and are publicized only informally by word of mouth.

[7] Although Respondent's Vice President Brown testified that McFadden was told in advance by Labor Coordinator Rogers about the safety meeting and instructed to be there when McFadden phoned in to Rogers regarding work for that day, Brown's testimony is not supported by Rogers, who concedes he did *not* tell McFadden about the safety meeting and that he has no indication that McFadden was in any way aware of it. Furthermore, it is to be noted that since McFadden had been told by Rogers that he (McFadden) would not be working on the day in question (i.e., Thursday, February 7, the day of the safety meeting), there would have been no occasion for McFadden to phone in to Rogers on February 6 (as mistakenly indicated by Brown) to find out about work on the next day, February 7.

[8] As did gang carrier Slappy also. Respondent's Vice President Brown concedes that the Company is "very lenient" regarding attendance of foremen and gang carriers at safety meetings, and that their attendance is not normally "mandatory." Respondent's Labor Coordinator Rogers likewise testified that attendance at safety meetings is not "mandatory."

[9] He incredibly maintains, however, that he knows of no such other case, while conceding that two other employees, both gang carriers, missed the same meeting as McFadden without comparable discipline being imposed as in McFadden's case.

such a meeting, as McFadden would have had to do. Indeed, Respondent's Vice President Brown candidly conceded on cross-examination that he would *not* expect a foreman off for 2 days for fishing or for black or other organizational activity, to forgo that activity in order to report back for a company safety meeting—in his own words, "Under no conditions."[10]

C. *Discussion, Determination, and Rationale*

It is conceded by Respondent that McFadden was demoted in relation to the events which have been described, the residual factual issue being whether it was because of his participation in the picketing or because he missed the safety meeting.

Without minimizing the importance of Respondent's commendable safety promotion program, upon the entire record here made I simply cannot and do not believe that McFadden was demoted because of his failure to attend a safety meeting he was not told about and did not know about, and which was held on his excused day off. As shown above, Respondent's Vice President himself concedes that he would not expect an employee to return from his day off to attend a safety meeting. I accordingly find Respondent's assertion that McFadden was demoted for that reason to be pretextual, since on the facts shown it simply does not withstand scrutiny (cf. *N.L.R.B.* v. *Dant*, 207 F.2d 165, 167 (9th Cir. 1953)). To the contrary, I believe and find that, as alleged in the complaint, the true reason he was demoted was his participation in the described picketing activity aimed at rectification of the perceived racially discriminatory personnel practices in Baltimore harbor. It remains to consider whether McFadden's participation therein constituted concerted activity within the Act's protection.

At the outset it is to be noted that Respondent concedes[11] that the picketing in question was not of Respondent. Rather, as shown by uncontroverted testimony of McFadden, the picketing was in protest of allegedly continuing invidious hiring and promotional policies, discriminating against black persons, prevailing in Baltimore harbor, and the perceived inadequacy of an old court order directed thereto, as well as the inadequacy of compliance therewith or enforcement thereof. This type of protest must be regarded as an exercise of constitutionally protected freedom of expression, and, particularly since McFadden made common cause with other employees in that action, also concerted activity within the Act's protection.[12]

The question remains whether remediation under the Act must be denied insofar as it would repair the harm to McFadden, upon the ground that he falls within its definition of "supervisor." To begin with, it will be recalled that Respondent itself (as well as his Union) has continued at all times to carry him in the nonsupervisory classification and job title of tractor driver, with only temporary, part-time, designation as an "extra" foreman, utilized as such only in the absence of a regular foreman.[13] But even assuming McFadden to have been invested with a full panoply, or at least a sufficiency, of supervisory powers, his demotion here for engaging in the picketing of the character described, should nevertheless, in my view, still be regarded as violative of the Act since it was bound to be coercive and restraintful toward other, rank-and-file employees exercising or seeking to exercise or entertaining like sentiments or ideas free of such impedimental coercions and restraints, as guaranteed by the Act.[14] Regardless of whether McFadden met the Act's definitional qualifications of "supervisor," since Respondent itself did not regard him as a technically true foreman and condoned the Union's not treating him as such, it is reasonable to believe that McFadden's demotion from higher pay status and nominal title under the circumstances was calculated to be regarded as coercive and restraintful toward and to have a profoundly chilling effect upon rank-and-file employees exercising or seeking to or thinking of exercising similar rights. With plain regard for the facts of life, surely the demotion of a black (or white) temporary or extra foreman for joining in a picket to protest allegedly discriminatory hiring practices against other black persons seeking employment or job advancement is bound to be coercive and restraintful against all black (as well as white) employees seeking through constitutionally lawful informational picketing to express similar ideas or to express their guaranteed right under the Act to protest collectively with a view toward remediation of such terms and conditions of hire and employment.

The Board, with judicial approbation, has many times indicated that the discharge of a supervisor violates Section 8(a)(1), although not 8(a)(3), where it infringes upon the rights of unit employees under the Act.[15]

[10] Brown further conceded at this point that he was not suggesting that McFadden took February 6–7 off without permission. The fact that McFadden did not ask to be excused from attending the safety meeting (as stressed by Brown and Rogers) is without significance, since McFadden did not know about it. Nor is there any persuasive evidence to refute McFadden's testimony that his extremely long prior work performance with Respondent had been unflawed. Respondent's Vice President Brown's current explanation for his promotion of McFadden because "usually if you take the laziest man you have he makes a good foreman, because he will get somebody else to do the work" must be taken with a grain of salt here, since even if true it has not been established to be applicable to McFadden nor would it, even if true, reflect adversely but rather, in that event, favorably upon him; and in any event McFadden's demotion here involves loss not only of status but of money.

[11] Testimony of Respondent's Vice President Brown.

[12] Cf., e.g., *N.L.R.B.* v. *Washington Aluminum Company, Inc.*, 370 U.S. 9 (1962) (alleged undesirable working conditions); *Pioneer Natural Gas Company*, 253 NLRB 17 (1980) (racial slurs concerning other employee); *Frank Briscoe Incorporated*, 247 NLRB 13 (1980) (EEOC complaint).

[13] The record is silent of showing, by substantial proof as required, the precise factual extent of McFadden's exercise of supervisory duties and responsibilities.

[14] See cases cited *supra*, fn. 12.

[15] Cf., e.g., *Iron Workers* v. *Perko*, 373 U.S. 701, 707 (1963); *Russell Stover Candies, Inc.* v. *N.L.R.B.*, 551 F.2d 204 (8th Cir. 1977), enfg. 223 NLRB 592 (1976); *N.L.R.B.* v. *Better Monkey Grip Company*, 243 F.2d 836, 837 (5th Cir. 1957); *N.L.R.B.* v. *Talladega Cotton Factory, Inc.*, 213 F.2d 208, 215–217 (5th Cir. 1954); *Belcher Towing Company*, 238 NLRB 446 (1978), enfd. as modified 614 F.2d 88 (5th Cir. 1980); *Gerry's Cash Markets, Inc., d/b/a Gerry's I.G.A.*, 238 NLRB 1141 (1978), enfd. 602 F.2d 1021 (1st Cir. 1979); *General Services, Inc.*, 229 NLRB 940 (1977), enforcement denied 575 F.2d 298 (5th Cir. 1978) (*Note*: Sec. 8(a)(4)); *Buddie's Super Markets*, 223 NLRB 950 (1976), enforcement denied 95

Continued

For these reasons and upon the basis of the cited authorities, it is found and determined that Respondent's demotion of McFadden, under the described circumstances, even assuming McFadden was a supervisor within the Act's definition, was restraintful and coercive of employees' rights under Section 8(a)(1) of the Act.

Upon the foregoing findings and the entire record, I state the following:

CONCLUSIONS OF LAW

1. Jurisdiction is properly asserted in this proceeding.

2. By demoting its employee Garris S. McFadden on or about February 11, 1980, from his former position, under the circumstances detailed and found in section III, *supra*, because he had participated with other employees in picketing against racially discriminatory practices in Baltimore harbor and allegedly inadequate countervailing measures, and by failing and refusing since then to reinstate or restore him to his former position, Respondent has discouraged and continues to discourage employees from engaging in such conduct (lawful and protected under the Constitution of the United States and under the Act), and has interfered with, restrained, and coerced employees, and continues to do so, in the exercise of their rights under Section 7, in violation of Section 8(a)(1) of the Act.

3. Said unfair labor practices have affected, affect, and unless permanently restrained and enjoined will continue to affect commerce within the meaning of Section 2(6) and (7) of the Act.

4. The proof fails to establish that Respondent has violated Section 8(a)(3) of the Act.

REMEDY

Since Respondent has violated Section 8(a)(1) of the Act as found, it should be required to cease and desist therefrom or like violation. With regard to its unlawful demotion of McFadden, Respondent should, as is usual in such cases, be required to cease and desist therefrom and to offer him reinstatement to his former job, with backpay and interest computed as explicated by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950); *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962); and *Florida Steel Corporation*, 231 NLRB 651 (1977), and to restore him to full seniority and other rights, benefits, and emoluments as if he had not been demoted; and also to expunge from all of his records all references that he was demoted for valid cause or any reason based upon or related to his failure to attend a safety meeting or any other job performance or related reason, and to refrain from so indicating to any other employer, prospective employer, or character or reference inquiry. Respondent should also, as usual, be required to preserve and make available its books and records to the Board's agents for backpay computation and compliance determination purposes; and to post the conventional informational notice to employees.

LRRM 2108 (5th Cir. 1977); *General Nutrition Center, Inc.*, 221 NLRB 850 (1975); *Bay State Gas Company*, JD-438-80 (1980); *S & K Industries, Inc.*, JD-724-77 (1977); *Chuck's Electric Co., Inc.*, JD-248-77 (1977).

Upon the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[16]

The Respondent, I.T.O. Corporation of Baltimore, Baltimore, Maryland, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Demoting or otherwise in violation of the Act take any adverse personnel action against or altering the job status of or discriminating against any employee, or threatening so to do, or failing or refusing to reinstate or restore any employee to his or her former job status and pay, because he or she has picketed against allegedly racially discriminatory hiring or other personnel practices in or about Baltimore harbor, or in protest of allegedly inadequate remediation thereof or allegedly inadequate compliance with or enforcement of any remedial order directed at such practices, or because he or she has lawfully exercised or proposes to exercise or continue to exercise or assert any other right under the National Labor Relations Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise or assertion of their rights under the Act.

2. Take the following affirmative actions necessary to effectuate the policies of the Act:

(a) Offer to Garris S. McFadden immediate, full, and unconditional reinstatement to the job from which he was demoted by Respondent on or about February 11, 1980 (or, if it no longer exists, to a substantially equivalent job with Respondent), without prejudice to his seniority and other rights, privileges, benefits, and emoluments, including but not limited to any pay and wage rate increases to comparable employees since McFadden's demotion, and make said employee whole for any loss of income, benefits, and emoluments (including overtime, holiday and vacation pay and time off, and hospitalization and other insurance restoration and claims reimbursement if applicable), together with interest, in the manner set forth in the "Remedy" portion of the Decision of which this Order forms a part.

(b) Expunge from all of said employee's records, whether said records are maintained by Respondent or elsewhere for Respondent, any entry or mention to the effect that said employee was demoted or pay reduced because of any work infraction or job performance or related reason, including but not limited to his failure to attend a safety meeting; and refrain from making any such report or statement to any employer, prospective employer, employment agency, unemployment insurance agency, or character or reference inquiry.

[16] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the Board, the findings, conclusions, and recommended Order which follows herein shall, as provided in Sec. 102.48 of those Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, wage rate and other records, lading schedules and records, labor requisitions and records, work schedules, manifests and records, overtime records, insurance and other benefits and programs records, social security payment records, timecards, personnel records and reports, and all other records and entries in Respondent's possession or subject to its control or direction, necessary or useful to determine the amounts of backpay and other sums and benefits due under and the extent of compliance with the terms of this Order.

(d) Post at its premises in Baltimore copies of the attached notice marked "Appendix."[17] Copies of said notice, on forms provided by the Regional Director for Region 5, after being signed by Respondent's authorized representative, shall be posted in said premises by Respondent immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter, in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify said Regional Director in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply therewith.

IT IS FURTHER ORDERED that the complaint be and it is hereby dismissed insofar as it alleges violation by Respondent of Section 8(a)(3) of the Act.

[17] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."